

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JAMES EMORY GARNER,

PLAINTIFF

V.

NO. 4:02CV237-P-D

ROBERT JOHNSON, ET AL,

DEFENDANTS

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

The *pro se* plaintiff in this § 1983 conditions of confinement case alleged that he was not properly housed for his medical class. A hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) was scheduled for May 8, 2003. At the hearing, plaintiff moved to voluntarily dismiss his complaint stating that the defendants had provided the relief he sought. The motion was granted, and the case was dismissed on May 16, 2003. Before the court is a motion for relief from judgment pursuant to Rule 60(b), Federal Rules of Civil Procedure. Plaintiff states he was removed from medical class housing on April 24, 2004, for no valid reason and improperly placed in a Behavioral Modification Program even though he has been a model inmate throughout his incarceration.

It appears that plaintiff was kept in the medical unit for approximately a year, then was removed. There is a possibility that plaintiff's medical condition could have changed during this time or that the evaluation of him was different at that point. Plaintiff also makes new allegations, such as being made to walk long distances carrying heavy burdens. Rather than setting aside the findings of this case, it appears that plaintiff should proceed with a new cause of action based upon his present condition and needs rather than those of almost four years ago when this case was originally filed. Accordingly, the motion for relief from judgment is **denied**.

SO ORDERED this 24th day of February, 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE